

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 02-1270-A)

In application of)
J. Fruehauf, *et al.*) Examiner: Lei Yao
Serial No. 10/734,880) Group Art Unit: 1642
Filed: December 12, 2003)
For: Gene Related Sensitivity and Resistance) Confirmation No.: 1031
To Chemotherapeutic Drug Treatment)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-14501

RULE 132 DECLARATION OF WILLIAM RICKETTS

I, William Ricketts, declare and state as follows:

1. I am Vice President of Clinical and Scientific Affairs at Oncotech, Inc. (now a division of Exiqon A/S), the assignee of the above referenced patent application.

2. I hold a PhD in bio-medical sciences from the University California San Diego and have over 20 years of experience in molecular and cellular biology. This experience covers both the identification and testing of new targets and compounds for anti-cancer therapies and the supervision of biologists and pharmacologists in the study of such therapies. A copy of my complete curriculum vita is attached hereto as Appendix A.

3. I have been informed, either upon information or belief, that the Examiner of the '880 Application has rejected claims 20, 21, and 40-43 as containing New Matter and under 35 U.S.C. 112, first paragraph, as containing subject matter which is not possessed by Applicant and asserts that "one skilled in the art cannot determine from the written disclosure of the

specification alone whether the sequence as claimed is identical to the sequences contained in the database under the accession no. at the time the application was filed.”

4. I hereby state that the genes recited in the specification were represented by probes on the commercially-available chip (Affymetrix U133A) as recited in Example 2 in the specification; and that sequences for these genes were available in a public database and were therefore, part of the general knowledge in the art at the time of filing of the ‘880 application.

5. I further state that the GenBank Accession Numbers for all of the genes recited in the claims were available in a public database, and were correlated with the probe sets on the commercially-available chip (Affymetrix U133A), which has remained unchanged and were therefore, part of the general knowledge in the art at the time of filing of the ‘880 application.

6. I further state that each of the sequences corresponding to the GenBank Accession Number recited in the claims is identical to the sequences in the sequence listing submitted herewith.

7. Any scientist working in the field relating to this invention would have recognized the genes as they were identified in the specification as it was filed, and would have been able to determine the sequence identities of these genes by consulting the GenBank database, which was accepted at the time in the field as a repository for gene sequence information.

8. Specifically with regard to the genes recited in the pending claims:

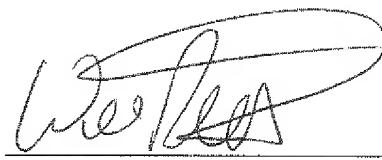
- The Myosin Phosphatase Target subunit 1 gene; corresponds to GenBank Accession No. AF458589; was submitted to GenBank 15 Dec 2001; and is identified as SEQ ID NO: 1 in the sequence listing submitted herewith.
- The Albumin D-Box Binding Protein gene corresponds to GenBank Accession No. U79283; was submitted to GenBank 22 Nov 1996; was identified in Andersson, *et al. Anal Biochem.* 1996 Apr 5;236(1):107-13; and is identified as SEQ ID NO: 2 in the sequence listing submitted herewith.
- The Complement Component 7 gene corresponds to GenBank Accession No. BC063851; was submitted to GenBank 08 Dec 2003; was identified in Strausberg, *et al. Proc Natl Acad Sci U S A.* 2002 Dec 24; 99(26):16899-903 (E-pub 2002 Dec 11); and is identified as SEQ ID NO: 3 in the sequence listing submitted herewith.

- The Urokinase Receptor gene corresponds to GenBank Accession No. BC002788; was submitted to GenBank 05 Feb 2001; was identified in Strausberg, *et al. Proc Natl Acad Sci U S A.* 2002 Dec 24; 99(26):16899-903 (E-pub 2002 Dec 11); and is identified by SEQ ID NO: 4 in the sequence listing submitted herewith.
- The Nuclear DNA-Binding Protein gene corresponds to GenBank Accession No. BC005235; was submitted to GenBank 27 Mar 2001; was identified in Strausberg, *et al. Proc Natl Acad Sci U S A.* 2002 Dec 24; 99(26):16899-903 (E-pub 2002 Dec 11); and is identified by SEQ ID NO: 5 in the sequence listing submitted herewith.
- The Zinc Finger Protein gene corresponds to GenBank Accession No. AF060181; was submitted to GenBank 16 Apr 1998; and is identified by SEQ ID NO: 6 in the sequence listing submitted herewith.
- The Tropomodulin gene corresponds to GenBank Accession No. AF237631; was submitted to GenBank 23 Feb 2000; and is identified as SEQ ID NO: 7 in the sequence listing submitted herewith.
- The Na,K-ATPase alpha-subunit gene corresponds to GenBank Accession No. D00099; was identified in Kawakami, *et al., J. Biochem* 1986 100(2):389-397; and is identified as SEQ ID NO: 8 in the sequence listing submitted herewith.
- The Plasminogen Activator gene corresponds to GenBank Accession No. BC002795; was submitted to GenBank 05 Feb 2001; and is identified as SEQ ID NO: 9 in the sequence listing submitted herewith.

All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

01/22/09

Date



William Ricketts